# 第二部分

第七條 (消除政治和公共生活中對婦女的歧視)

締約各國應採取一切適當措施,消除在本國政治和公共生活中對婦女的 歧視,特別應保證婦女在與男子平等的條件下:

- (a)在一切選舉和公民投票中有選舉權,並在一切民選機構有被選舉權;
- (b)参加政府政策的制訂及其執行,並擔任各級政府公職,執行一切公務;
- (c) 参加有關本國公共和政治生活的非政府組織和協會。

## 一、背景及概說

本公約所指的政治參與是以具備有以下條件為前提:也就是根據《世界人權宣言》第 21 條和《公民及政治權利國際公約》第 25 條之規定,公民均享有在定期選舉中的選舉和被選舉權,這種選舉應是普遍(universal suffrage)的並以無記名投票方式(secret ballot)進行,以保證選舉人的意志的自由表達。(見一般性建議23/6) 一個國家的「政治和公共生活」(political and public life)是一個廣泛的概念,是指政治權力的行使,尤其是行使立法、司法、行政權力。「政治和公共生活」包括公共行政的各方面以及在國際、國家、區域和地方各層級制定(formulation)和執行(implementation)政策。這一概念還包括公民社會的許多方面,包括公共委員會(public boards)、地方公民會議(local councils)以及諸如各政黨、工會、專業或職業公會(professional or industry associations)、婦女組織、社區基層組織和其他與公共生活和政治生活有關的組織的活動。(見一般性建議23/5)

婦女一般從事私人或家庭領域活動,負責生育和撫養子女,所有社會都將這些活動視為次等(inferior)。相形之下,範圍涉及除私人及家庭領域之外的各種公共生活活動受到尊重和尊敬。男性歷來既支配公共生活,又掌有權力將婦女限制並約束在私人領域之內。(見一般性建議23/8)儘管婦女在支撐家庭和社會方面扮演主要角色,並對人類發展作出貢獻,但她們被排斥在政治領域和決策過程之外,而這些決策過程卻會決定她們日常生活的模式和社會的未來。(見一般性建議23/9)

在所有國家中,價值觀和宗教信仰等文化環境、以及男性未能分擔與組織家務(the organization of the household)和撫養子女有關的工作、和相關支援服務的缺乏等,一直是阻礙(inhibiting)婦女參與公共生活能力的最重要因素。在所有國家中,文化傳統和宗教信仰一直是將婦女限制(confining)在私人生活領域並妨礙婦女積極參與公共生活的一個因素。(見一般性建議23/10)

## 二、名詞解釋及重要內容

- (一)各款之立法目的
- 1.第7條(a)款之目的

CEDAW委員會認爲本款的目的在於:

- (1)促使民選職位上(publicly elected positions)的性別人數平衡;
- (2)確保婦女了解其投票權、以及這一項權利的重要性及如何行使此權利;
- (3)確保克服平等方面的障礙,其中包括因文盲(illiteracy)、語言、貧困和妨礙婦女行動自由而造成的障礙;
- (4)協助具有前述障礙狀況的婦女(women experiencing such disadvantages)行使其投票權和被選舉權。

本款也禁止對婦女享有的選舉權施加對男性不適用或對婦女產生重大影響的限制或條件。例如,規定只有一定教育程度、擁有最起碼財產資格或非文盲的人才有選舉權,這不僅不合理,侵犯了普遍受到保障的人權,而且也會對婦女產生重大影響,從而違反CEDAW的條款。(見一般性建議23/23)

- 2.第7條(b)款之目的在於:
- (1)婦女在制定政策方面的代表權平等(Equality of representation);
- (2)婦女享有擔任公職的平等權利(equal right to hold public office);
- (3)針對婦女的徵聘是公開的而且可上訴(open and subject to appeal);
- (4)參加有關本國公共和政治生活的非政府組織和協會。(見一般性建議 23/46)

第7條(b)有助於將性別議題主流化(the mainstreaming of gender issues),並有助於促使公共決策採納性別觀點(gender perspective)。(見一般性建議23/25)

- 3.CEDAW委員會認爲在第7條(c)款之目的在於:
- (1)確保頒布有效立法使能夠防止對婦女的歧視;
- (2)鼓勵非政府組織及公共和政治協會採用策略鼓勵婦女代表及婦女之參與。(見一般性建議23/47)
- (二)婦女行使政治權利所面臨之困難

儘管幾乎所有締約國都通過了憲法或其他法律條文,規定男女在一切選舉和公民投票中享有平等的選舉權,但是很多國家的婦女在這項權利的行使方面仍舊面臨困難。(見一般性建議23/19)

損害這些權利的因素如下:

- 1.婦女往往不若男性容易取得有關候選人以及政黨的政綱(party political platforms)和投票程序的資料,政府和政黨沒有能夠提供這方面的資訊。阻礙婦女充分而平等地行使她們的選舉權的另一些重要因素還包括婦女身爲文盲,缺乏相關知識以致不了解政治制度或是政治倡議和政策對她們生活的影響等。
- 2.婦女雙重的工作負擔(double burden of work)和財務上的限制使她們沒有充分的時間或機會注意選舉活動和完全自由地行使選舉權。
- 3.許多國家的傳統、文化社會和文化上的陳規舊習及社會文化刻板印象(social and cultural stereotypes)阻礙了婦女行使選舉權。許多男性通過勸說或直接行動 (persuasion or direct action)包括替婦女投票來影響或控制婦女的投票。應當防止任何這類做法。
- 4.在一些國家,妨礙婦女參與社區公共或政治生活的其他因素包括:婦女的行動自由(freedom of movement)或參與權(right to participate)受到限制,對婦女的政治參與普遍存在消極態度,或是選民不信任、不支持女性候選人等等。此外,有些婦女認為政治是令人討厭的(distasteful),因而避免參與政治活動。(見一般性建議23/20)

因此國家應該注意選舉方式對於婦女產生重大影響的限制條件,即使表面上該限制條件與性別無關。投票方式(balloting)、議會席位的分配(the distribution of seats)、選區的選擇(the choice of district)均對當選議會議員的婦女所占的比例有重要影響。各政黨應該本著機會平等(the principles of equal opportunity)和民主的原則,注意男女候選人人數均等的問題。(見一般性建議23/22)

# (三)採取一切適當措施

#### 1.積極的暫行特別措施

移除法律上的障礙(de jure barriers)是必要的,但這是不夠的。雖然未能給予婦女充分和平等的參與可能不是有意的(unintentional),而是過時的慣例和程序的結果(outmoded practices and procedures),但是這些程序和慣例無意間也提升了男性的地位。CEDAW 第 4 條鼓勵採取暫行特別措施,以便充分實施第 7 和第 8 條。擬訂有效暫行策略以實現平等參與的國家,已實施一系列措施,包括吸收(recruiting)、在財務上援助、和訓練女性候選人,修改選舉程序,發展促進平等參與的競選活動,規定保障之名額及比例(numerical goals and quotas),刻意任命

婦女擔任在各個社會的日常生活中具有重要作用的司法或其他職業團體的公職。正式排除障礙,採取暫行特別措施鼓勵男女平等參與社會公共生活,是在政治生活中實現真正平等的必要前提。但是要想克服數世紀以來男性在公共領域所占的支配地位,婦女還需要得到社會各界的鼓勵和支持,以實現充分、有效的參與。這種鼓勵措施必須由各締約國以及各政黨和政府官員領導。締約國有義務確保暫行特別措施明確用來支持平等原則,因此也符合保障全體公民人人平等的憲法原則。(見一般性建議 23/15)

《北京行動綱領》強調的關鍵問題是,婦女在普遍參加政治和公共生活方面存在著法律與事實或權利與現實之間的差距。研究結果指出,如果婦女參與的比率能達到30%至35%(一般稱爲「關鍵人數(critical mass)」),就會對政治方式和決定內容產生實際的影響,政治生活就會充滿新的活力。(見一般性建議23/16)

#### 2.破除一切阻礙

減輕婦女的某些家務負擔,將使婦女能夠更充分地參與社區生活。婦女對於男性的經濟依賴,會阻礙她們作出重要的政治決定,並阻礙她們積極參與公共生活。婦女承受雙重的工作負擔、經濟上的依賴性,加上公共及政治生活工作時間長而且不具靈活性(inflexible),使婦女無法更加積極地參與。(見一般性建議23/11)新聞媒體製造的刻板印象(stereotyping)將婦女的政治生活侷限在環境、兒童和保健等問題上,而排除在財政、預算管制(budgetary control)和解決衝突(conflict resolution)等方面的責任之外。婦女從事專業的參與度很低,而政治人物往往從專業人員中產生,因此這又是一個障礙。(The low involvement of women in the professions from which politicians are recruited can create another obstacle.)一些國家是有女性領導人掌權,但這可能是其父親、丈夫或其他男性親屬的影響所致,而不是她們本身參選成功的結果。(見一般性建議23/12)

### (四)確保女性平等參與政府決策

### 1.參與政府決策

締約國有責任在它們的管轄範圍內任命婦女擔任高級決策職位並且理所當然地(as a matter of course)徵求和吸取廣泛代表婦女意見和利益的團體的意見。 (見一般性建議23/26)締約各國還有義務確保查明和克服阻礙婦女充分參與政府政策制定的障礙。這些障礙包括只是象徵性的任命幾個婦女而就感到自滿以及阻礙婦女參與的傳統和習慣態度。如果婦女在政府高層沒有廣泛的任職或者沒有得到適當的諮詢,甚至根本沒有得到諮詢,政府的政策就將是不全面的和沒有效用 的。(見一般性建議23/27)締約各國有權力任命婦女擔任高級的內閣和行政職位,而各政黨也有責任確保將婦女列入政黨名冊,並在有可能成功當選的地區被提名競選。締約各國也應努力確保任命婦女在與男性平等的條件下擔任政府諮詢機構(advisory bodies)的職務。並且這些機構應根據情況考慮具代表性之婦女團體的意見。政府的基本責任是鼓勵採取這些倡議行動來領導和引導輿論並改變歧視婦女或阻礙婦女參與政治和公眾事務的態度。(見一般性建議23/28)

若干締約國爲確保婦女平等參與擔任高級內閣成員(senior cabinet)和行政職位並成爲政府諮詢機構的成員所採取的措施包括:作出規定,在可能被任命者同樣合乎條件的情況下(equally qualified),優先考慮(preference)婦女提名人;通過一項規定,在公共團體(public body)中任一性別成員均不應少於40%;在內閣和公職任命方面制定婦女保障名額(quota for women members);和諮詢(consultation)婦女團體意見,確保具有資格之婦女被提名爲公共團體的成員和擔任公職,並且編制及持續更新這類婦女的名冊(registers);在公共團體和公共職位的任命中便利(facilitate)婦女的提名。在私營組織於提名諮詢機構成員之人選時,締約各國應鼓勵這些組織提出符合資格且適合的婦女作爲這些機構的成員。(見一般性建議23/29)

### 2.確保女性參與非政府組織

鑑於政黨在決策方面所起的重要作用,各國政府應鼓勵政黨審查婦女是否充分且平等地參與它們的活動,如果情況並非如此,則應找出問題的起因。應該鼓勵政黨採取有效措施,其中包括提供資料、資金和其他資源,來克服防止婦女充分參與和實現代表權的障礙,並確保婦女實際上有平等機會擔任政黨幹部(party officials)和被提名爲選舉的候選人。(見一般性建議23/32)

某些國家的政黨已採取的措施包括將其管理單位的某一最低限度數目或百分比的職位(minimum number or percentage of positions)保留給婦女,從而確保提名的男女候選人人數均等,並確保婦女沒有一律被分配到較不利的選區(less favourable constituencies)或黨名單上最不利(the least advantageous positions)的職位。締約國應確保這一類暫行特別措施不違反禁止歧視的法律或其他憲法上之平等保障。(見一般性建議23/33)其他組織(像是工會和政黨)有義務以執行理事會性別比例均等(gender-balanced representation)的方式於其章程、在執行這些規則和成員資格的組成方面表示它們對性別平等原則的承諾,以便這些組織得到社會所有領域的充分平等參與及兩性的貢獻的好處。(見一般性建議23/34)

### 四、我國相關法規例示

我國憲法第 134 條明文規定婦女之保障名額:「各種選舉,應規定婦女當選名額,其辦法以法律定之。」過去在修憲時,儘管政府之民意機關及組成屢有修正,但皆有規定婦女保障名額。現行憲法僅餘立法委員爲中央級民意機關,憲法對於立法委員的婦女名額亦有保障,但係針對政黨不分區的立委。

### 憲法增修條文第4條規定:

「立法院立法委員自第七屆起一百一十三人,任期四年,連選得連任,於每屆 任滿前三個月內,依左列規定選出之,不受憲法第六十四條及第六十五條之限 制:

- 一、自由地區直轄市、縣市七十三人。每縣市至少一人。
- 二、自由地區平地原住民及山地原住民各三人。
- 三、全國不分區及僑居國外國民共三十四人。

前項第一款依各直轄市、縣市人口比例分配,並按應選名額劃分同額選舉 區選出之。第三款依政黨名單投票選舉之,由獲得百分之五以上政黨選舉票之 政黨依得票比率選出之,各政黨當選名單中,婦女不得低於二分之一。」

至於地方民意代表選舉的婦女保障名額比例則爲四分之一,適用於直轄市議員、縣(市)議員、鄉(鎮、市)民代表選舉,規定在「地方制度法」第33條第四項及第五項:

「各選舉區選出之直轄市議員、縣(市)議員、鄉(鎮、市)民代表名額達四 人者,應有婦女當選名額一人;超過四人者,每增加四人增一人。

直轄市、縣(市)選出之山地原住民、平地原住民名額在四人以上者,應有婦女當選名額;超過四人者,每增加四人增一人。鄉(鎮、市)選出之平地原住民名額在四人以上者,應有婦女當選名額;超過四人者,每增加四人增一人。」

#### 【前文引用之一般性建議】

### 一般性建議23/5

※聯合國官方中文版(簡轉繁)

第七條規定各締約國應採取一切適當措施,消除在政治和公共生活中對婦女的歧視並確保婦女在政治和公共生活方面享有與男子平等的地位。第七條具體說明的義務可擴大到公共和政治生活的所有領域,而不局限於(a)、(b)和(c)項所規定的那些領域。一個國家的政治和公共生活是一個廣泛的概念,是指行使政治權力,

尤其是行使立法、司法、行政和管理權力。這一措詞包括公共行政的所有方面以及在國際、國家、區域和地方各級制定和執行政策。這一概念還包括民間社會的許多方面,包括公共委員會、地方理事會以及諸如各政黨、工會、專業或行業協會、婦女組織、社區基層組織和其他與公共生活和政治生活有關的組織的活動。 ※聯合國官方英文版

Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life. The obligation specified in article 7 extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.

### 一般性建議23/6

※聯合國官方中文版(簡轉繁)

實際上,《公約》設想了在以下這種政治制度的框架內可以實現這種平等,即按照《世界人權宣言》第二十一條和《公民權利和政治權利國際公約》第二十五條的規定,每個公民均享有在真正的定期的選舉中的選舉和被選舉權,這種選舉應是普遍的並以無記名投票方式進行,以保證選舉人的意志的自由表達。

※聯合國官方英文版

The Convention envisages that, to be effective, this equality must be achieved within the framework of a political system in which each citizen enjoys the right to vote and be elected at genuine periodic elections held on the basis of universal suffrage and by secret ballot, in such a way as to guarantee the free expression of the will of the electorate, as provided for under international human rights instruments, such as article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights.

#### 一般性建議23/8

※聯合國官方中文版(簡轉繁)

人們在公共領域和私人領域的活動向來被視為互不相同,而得到相應的管理。婦女一般從事私人或家庭領域活動,負責生育和撫養子女,所有社會都將這些活動視為次一級。相形之下,公共生活受到尊重和尊敬,範圍涉及除私人及家庭領域之外的各種活動。男子歷來既支配公共生活,且掌有權力將婦女限制並約束在私人領域之內。

#### ※聯合國官方英文版

Public and private spheres of human activity have always been considered distinct, and have been regulated accordingly. Invariably, women have been assigned to the private or domestic sphere, associated with reproduction and the raising of children, and in all societies these activities have been treated as inferior. By contrast, public life, which is respected and honoured, extends to a broad range of activity outside the private and domestic sphere. Men historically have both dominated public life and exercised the power to confine and subordinate women within the private sphere.

## 一般性建議23/9

※聯合國官方中文版(簡轉繁)

#### ※聯合國官方英文版

Despite women's central role in sustaining the family and society and their contribution to development, they have been excluded from political life and the decision-making process, which nonetheless determine the pattern of their daily lives and the future of societies. Particularly in times of crisis, this exclusion has silenced women's voices and rendered invisible their contribution and experiences.

### 一般性建議23/10

※聯合國官方中文版(簡轉繁)

在所有國家,壓制婦女參與公共生活能力的最重要因素一直是價值觀和宗教信仰等文化環境、缺乏各種服務、男子未能分擔與組織家務和撫養子女有關的工作。

在所有國家,文化傳統和宗教信仰一直是將婦女約束在私人生活領域並妨礙婦女 積極參與公共生活的一個因素。

#### ※聯合國官方英文版

In all nations, the most significant factors inhibiting women's ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.

## 一般性建議23/11

※聯合國官方中文版(簡轉繁)

減輕婦女的某些家務負擔,將使婦女能夠更充分地參與社區生活。婦女在經濟上依靠男子,往往阻礙她們作出重要的政治決定,並阻礙她們積極參與公共生活。婦女承受雙重的工作負擔、經濟上的依賴性,加上公共及政治生活工作時間長而且不具靈活性,使婦女無法更加積極地參與。

#### ※聯合國官方英文版

Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities. Women's economic dependence on men often prevents them from making important political decisions and from participating actively in public life. Their double burden of work and their economic dependence, coupled with the long or inflexible hours of both public and political work, prevent women from being more active.

#### 一般性建議23/12

※聯合國官方中文版(簡轉繁)

陳規包括新聞媒介製造的陳規觀念將婦女的政治生活局限在環境、兒童和保健等問題上,而排除在財政、預算管制和解決衝突等方面的責任之外。婦女在產生政治家的職業中參與的程度很低,這又是一個障礙。一些國家是有女性領導人掌權,但這可能是其父親、丈夫或其他男性親屬的影響所致,而不是她們本身參選成功所致。

※聯合國官方英文版

Stereotyping, including that perpetrated by the media, confines women in political life

to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution. The low involvement of women in the professions from which politicians are recruited can create another obstacle. In countries where women leaders do assume power this can be the result of the influence of their fathers, husbands or male relatives rather than electoral success in their own right.

### 一般性建議23/15

※聯合國官方中文版(簡轉繁)

雖然移除法律上的障礙是必要的,但這是不夠的。未實現婦女的充分、平等參與可能不是存心的,是古舊過時的慣例和程式的結果,這些慣例和程式無心之中提升了男子。《公約》第四條鼓勵採取暫行特別措施,以便充分實施第七和第八條。擬訂有效暫行戰略以實現平等參與的國家,已實施一系列措施,包括吸收、在財務上援助和訓練女性候選人,修改選舉程式,開展促進平等參與的競選活動,規定數字指標和保障名額,有針對性地任命婦女擔任在各個社會的日常生活中起重要作用的司法或其他職業團體公職。正式排除障礙,採取暫行特別措施鼓勵男女平等參與社會公共生活,是在政治生活中實現真正平等的必要前提。

但是要想克服多少個世紀以來男性在公共領域所占的支配地位,婦女還需要得到 社會各界的鼓勵和支持,以實現充分、有效的參與。這種鼓勵措施必須由各締約 國以及各政黨和政府官員領導。締約國有義務確保暫行特別措施明確用來支持平 等原則,因此也符合保障全體公民人人平等的憲法原則。

#### ※聯合國官方英文版

While removal of de jure barriers is necessary, it is not sufficient. Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men. Under article 4, the Convention encourages the use of temporary special measures in order to give full effect to articles 7 and 8. Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies. The formal removal of

barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life. In order, however, to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, encouragement which must be led by States parties to the Convention, as well as by political parties and public officials. States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.

#### 一般性建議23/16

※聯合國官方中文版(簡轉繁)

《北京行動綱要》強調的關鍵問題是,婦女在普遍參加政治和公共生活方面存在著法律與事實或權利與現實之間的差距。研究結果指出,如果婦女參與的比率能達到30%至35%(一般稱為「關鍵人數」),就會對政治方式和決定內容產生實際的影響,政治生活就會充滿新的活力。

※聯合國官方英文版

The critical issue, emphasized in the Beijing Platform for Action, 5 is the gap between the de jure and de facto, or the right as against the reality of women's participation in politics and public life generally. Research demonstrates that if women's participation reaches 30 to 35 per cent (generally termed a "critical mass"), there is a real impact on political style and the content of decisions, and political life is revitalized.

#### 一般性建議23/19

※聯合國官方中文版(簡轉繁)

對締約國的報告的審查結果表明,儘管幾乎所有締約國都通過了憲法或其他法律條文,規定男女在一切選舉和公民投票中享有平等的選舉權,但是很多國家的婦女在這項權利的行使方面仍舊面臨困難。

※聯合國官方英文版

The examination of the reports of States parties demonstrates that, while almost a ll have ado pted constitutional or other legal provisions that grant to both women and men the equal right to vote in all elections and public referendums, in many nations

women continue to experience difficulties in exercising this right.

#### 一般性建議23/20

※聯合國官方中文版(簡轉繁)

損害這些權利的因素如下:

- (a) 婦女取得有關候選人以及政黨的政綱和投票程式的資料的機會往往不如男子,政府和政黨沒有能夠提供這方面的資訊。阻礙婦女充分而平等地行使她們的選舉權的另一些重要因素。包括婦女身為文盲,缺乏知識不瞭解政治制度,或是政治倡議和政策對她們生活的影響等。未能認識到選舉權帶來了要求變化的權利,責任和機會這一點也意味著婦女並不都參加選民登記。
- (b) 婦女雙重的工作負擔和財政上的限制使她們沒有充分的時間或機會注意選舉活動和完全自由地行使選舉權。
- (c) 很多國家的傳統、文化社會和文化上的陳規舊習阻礙了婦女行使選舉權。許 多男子通過勸說或直接行動包括替婦女投票來影響或控制婦女的投票。應當防止 任何這類做法。
- (d) 在一些國家,妨礙婦女參與社區公共或政治生活的其他因素包括:婦女的行動自由或參與權受到限制,對婦女的政治參與普遍存在消極態度,或是選民不信任、不支持女性候選人等等。此外,有些婦女認為政治是令人討厭的,因而避免參與政治活動。

### ※聯合國官方英文版

Factors which impede these rights include the following:

- (a) Women frequently have less access than men to information about candidates and about party political platforms and voting procedures, information which Governments and political parties have failed to provide. Other important factors that inhibit women's full and equal exercise of their right to vote include their illiteracy, their lack of knowledge and understanding of political systems or about the impact that political initiatives and policies will have upon their lives. Failure to understand the rights, responsibilities and opportunities for change conferred by franchise also means that women are not always registered to vote;
- (b) Women's double burden of work, as well as financial constraints, will limit women's time or opportunity to follow electoral campaigns and to have the full freedom to exercise their vote;
- (c) In many nations, traditions and social and cultural stereotypes discourage women

from exercising their right to vote. Many men influence or control the votes of women by persuasion or direct action, including voting on their behalf. Any such practices should be prevented;

(d) Other factors that in some countries inhibit women's involvement in the public or political lives of their communities include restrictions on their freedom of movement or right to participate, prevailing negative attitudes towards women's political participation, or a lack of confidence in and support for female candidates by the electorate. In addition, some women consider involvement in politics to be distasteful and avoid participation in political campaigns.

## 一般性建議23/22

※聯合國官方中文版(簡轉繁)

投票方式、議會席位的分配、選區的選擇均對當選議會議員的婦女所占的比例有 重要影響。各政黨應該本著機會平等和民主的原則,注意男女候選人人數均等的 問題。

※聯合國官方英文版

The system of balloting, the distribution of seats in Parliament, the choice of district, all have a significant impact on the proportion of women elected to Parliament. Political parties must embrace the principles of equal opportunity and democracy and endeavour to balance the number of male and female candidates.

#### 一般性建議23/23

※聯合國官方中文版(簡轉繁)

不得對婦女享有的選舉權施加對男子不適用或對婦女產生重大影響的限制或條件。例如,設限規定只有一定教育程度、擁有最起碼財產資格或非文盲的人才有選舉權,這不僅不合理,侵犯了普遍受到保障的人權,而且也會對婦女產生重大影響,從而違反《公約》的條款。

※聯合國官方英文版

The enjoyment of the right to vote by women should not be subject to restrictions or conditions that do not apply to men or that have a disproportionate impact on women. For example, limiting the right to vote to persons who have a specified level of education, who possess a minimum property qualification or who are literate is not only unreasonable, it may violate the universal guarantee of human rights. It is also

likely to have a disproportionate impact on women, thereby contravening the provisions of the Convention.

### 一般性建議23/25

※聯合國官方中文版(簡轉繁)

第七條(b)項還規定締約國應保證婦女有權充分參加政府政策的制訂,並擔任各級政府公職。這將促進性別問題被融入主流,並有助於促使公共決策採納性別觀點。

※聯合國官方英文版

Article 7 (b) also requires States parties to ensure that women have the right to participate fully in and be represented in public policy formulation in all sectors and at all levels. This would facilitate the mainstreaming of gender issues and contribute a gender perspective to public policy-making.

#### 一般性建議23/26

※聯合國官方中文版(簡轉繁)

締約國有責任在它們的管轄範圍內任命婦女擔任高級決策職位並且理所當然地徵求和吸取廣泛代表婦女意見和利益的團體的意見。

※聯合國官方英文版

States parties have a responsibility, where it is within their control, both to appoint women to senior decision-making roles and, as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests.

#### 一般性建議23/27

※聯合國官方中文版(簡轉繁)

締約各國還有義務確保查明和克服阻礙婦女充分參與政府政策的制訂的障礙。這 些障礙包括滿足於象徵性地任命幾個婦女,以及阻礙婦女參與的傳統和習慣態 度。如果婦女在政府高層沒有得到廣泛代表或者沒有得到適當的諮詢,甚至根本 沒有得到諮詢,政府的政策就將是不全面的和沒有效用的。

※聯合國官方英文版

States parties have a further obligation to ensure that barriers to women's full participation in the formulation of government policy are identified and overcome.

These barriers include complacency when token women are appointed, and traditional and customary attitudes that discourage women's participation. When women are not broadly represented in the senior levels of government or are inadequately or not consulted at all, government policy will not be comprehensive and effective.

## 一般性建議23/28

※聯合國官方中文版(簡轉繁)

任命婦女擔任高級的內閣和行政職位的權力一般在於締約國,但各政黨也有責任確保將婦女列入政黨名冊並在有可能成功獲選的地區被提名競選。締約各國也應努力確保任命婦女在與男子平等的條件下擔任政府諮詢機構的職務。並且這些機構應根據情況考慮代表婦女的團體的意見。政府的基本責任是鼓勵採取這些倡議行動來領導和引導輿論並改變歧視婦女或阻礙婦女參與政治和公眾事務的態度。
※聯合國官方英文版

While States parties generally hold the power to appoint women to senior cabinet and administrative positions, political parties also have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success. States parties should also endeavour to ensure that women are appointed to government advisory bodies on an equal basis with men and that these bodies take into account, as appropriate, the views of representative women's groups. It is the Government's fundamental responsibility to encourage these initiatives to lead and guide public opinion and change attitudes that discriminate against women or discourage women's involvement in political and public life.

### 一般性建議23/29

※聯合國官方中文版(簡轉繁)

若干締約國為確保婦女平等參與擔任高級內閣和行政職位並成為政府諮詢機構的成員所採取的措施包括:作出規定,在可能被任命者同樣合乎條件的情況下,優先考慮女性提名人;通過一項規定,在公共團體中男女成員均不應少於40%;在內閣和公職任命方面制訂婦女保障名額;和同婦女組織協商,確保合格婦女被提名為公共團體的成員和擔任公職,並且編製和保持這類婦女的名冊;在公共團體和公共職位的任命中便利婦女的提名。在私營組織的提名下任命諮詢機構成員時,締約各國應鼓勵這些組織提出合格並適合的婦女作為這些機構的成員。

※聯合國官方英文版

Measures that have been adopted by a number of States parties in order to ensure equal participation by women in senior cabinet and administrative positions and as members of government advisory bodies include: adoption of a rule whereby, when potential appointees are equally qualified, preference will be given to a woman nominee; the adoption of a rule that neither sex should constitute less than 40 per cent of the members of a public body; a quota for women members of cabinet and for appointment to public office; and consultation with women's organizations to ensure that qualified women are nominated for membership in public bodies and offices and the development and maintenance of registers of such women in order to facilitate the nomination of women for appointment to public bodies and posts. Where members are appointed to advisory bodies upon the nomination of private organizations, States parties should encourage these organizations to nominate qualified and suitable women for membership in these bodies.

#### 一般性建議23/32

※聯合國官方中文版(簡轉繁)

審查締約國的報告後發現,所提供的為數不多的有關政黨的資料表明,婦女代表人數不足或集中在影響力不及男子的職責上的情況。鑒於政黨在決策方面所起的重要作用,各國政府應鼓勵政黨審查婦女在何種程度上充分和平地參與它們的活動,如果情況並非如此,則應找出問題的起因。應該鼓勵政黨採取有效措施,其中包括提供資料、資金和其他資源,來克服防止婦女充分參與和實現代表權的障礙,並確保婦女實際上有平等機會充當党幹部和被提名為選舉的候選人。

## ※聯合國官方英文版

An examination of the reports of States parties demonstrates that, on the few occasions when information concerning political parties is provided, women are under-represented or concentrated in less influential roles than men. As political parties are an important vehicle in decision-making roles, Governments should encourage political parties to examine the extent to which women are full and equal participants in their activities and, where this is not the case, should identify the reasons for this. Political parties should be encouraged to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women's full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated

as candidates for election.

#### 一般性建議23/33

※聯合國官方中文版(簡轉繁)

一些政黨已採取的措施包括將其執行機構的某一最低限度數目或百分比的職位保留給婦女,從而確保提名的男女候選人人數均等,並確保婦女沒有一律被分配到較不利的選區或黨名單上最不利的職位。締約國應確保禁止歧視的法律或其他的平等憲法保障明確允許這一類暫行特別措施。

※聯合國官方英文版

Measures that have been adopted by some political parties include setting aside for women a certain minimum number or percentage of positions on their executive bodies, ensuring that there is a balance between the number of male and female candidates nominated for election, and ensuring that women are not consistently assigned to less favourable constituencies or to the least advantageous positions on a party list. States parties should ensure that such temporary special measures are specifically permitted under anti-discrimination legislation or other constitutional guarantees of equality.

### 一般性建議23/34

※聯合國官方中文版(簡轉繁)

像工會和政黨一般的其他組織有義務以執行理事會男女代表人數均等的方式在它們的規章、在執行這些規則和成員資格的組成方面表示它們對性別平等原則的承諾,以便這些組織得到社會所有階層的充分和平等參與及兩性的貢獻的好處。 這些組織以及非政府組織還在政治技巧、參與和領導方面為婦女提供寶貴的訓練機會。

#### ※聯合國官方英文版

Other organizations such as trade unions and political parties have an obligation to demonstrate their commitment to the principle of gender equality in their constitutions, in the application of those rules and in the composition of their memberships with gender-balanced representation on their executive boards so that these bodies may benefit from the full and equal participation of all sectors of society and from contributions made by both sexes. These organizations also provide a valuable training ground for women in political skills, participation and leadership, as do

non-governmental organizations (NGOs).

#### 一般性建議23/45

※聯合國官方中文版(簡轉繁)

第七條(a)項下應確定、實施並監測有效性的措施旨在:

- (a) 促使民選職位上的男女人數平衡;
- (b) 確保婦女瞭解其投票權、瞭解這一項權利的重要性及如何行使這方面的權利;
- (c) 確保克服平等方面的障礙,其中包括因文盲、語言、貧困和妨礙婦女行動自由而造成的障礙;
- (d) 協助處境不利的婦女行使其投票權和被選舉權。

※聯合國官方英文版

Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to:

- a. Achieve a balance between women and men holding publicly elected positions;
- b. Ensure that women understand their right to vote, the importance of this right and how to exercise it;
- c. Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;
- d. Assist women experiencing such disadvantages to exercise their right to vote and to be elected.

#### 一般性建議23/46

※聯合國官方中文版(簡轉繁)

第七條(b)項下的措施旨在確保:

- (a) 婦女在制訂政府政策方面的代表權平等;
- (b) 婦女享有擔任公職的平等權利;
- (c) 針對婦女的徵聘是公開的而且可上訴。

※聯合國官方英文版

Under article 7, paragraph (b), such measures include those designed to ensure:

- a. Equality of representation of women in the formulation of government policy;
- b. Women's enjoyment in practice of the equal right to hold public office;
- c. Recruiting processes directed at women that are open and subject to appeal.

## 一般性建議 23/47

※聯合國官方中文版(簡轉繁)

第七條(c)項下的措施旨在:

- (a) 確保頒佈關於禁止歧視婦女的有效立法;
- (b) 鼓勵非政府組織及公共和政治協會採用鼓勵婦女參加其工作和具有代表權 的戰略。

※聯合國官方英文版

Under article 7, paragraph (c), such measures include those designed to:

- a. Ensure that effective legislation is enacted prohibiting discrimination against women;
- b. Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.

## 第八條

締約各國應採取一切適當措施,保證婦女在與男子平等不受任何歧視的條件下,有機會在國際上代表本國政府和參加各國際組織的工作。

## 一、背景及概說

CEDAW第8條規定各國政府有責任確保婦女有機會參與各層級國際事務以及各領域的活動,促使她們參與經濟和軍事事務,參與多邊(multilateral)和雙邊(bilateral)外交活動並將其納入國際和區域會議的官方代表團。(見一般性建議23/35)從對各締約國的報告來看,很明顯大部分政府的外交和外事機構中,婦女任職的人數不足,特別是在最高級別上。婦女常常被派往對該國的外交關係而言,較不重要的使館。在某些情況下,婦女的任命還會因婚姻狀況方面的限制而受到歧視。有時,在相當職位(parallel position)上的婦女得不到男性外交官所享有的配偶和家庭福利待遇。婦女參與國際事務的機會往往被排除,因爲他們假定婦女要承擔家務責任(domestic responsibilities),包括假定她們必須照顧家庭中受撫養的人(family dependants),而無法接受任命。(見一般性建議23/36)

很多常駐聯合國和其他國際組織的代表團中都沒有女性外交官,也很少有在較高級別(senior levels)任職的婦女。那些負責確定設立國際和全球目標、議程和優先次序的專家會議(expert meetings and conference),也有類似的情況。聯合國系統的組織,以及在區域性經濟、政治和軍事機構已成爲重要的國際公共雇主(international public employers),但即使在這些組織及機構中,婦女仍然是少數,且主要集中在較低級別的職位(lower-level positions)。(見一般性建議23/37)由於在任命、拔擢人員至相關外交或國際組織職位及參加官方代表團方面往往缺少客觀的標準(objective criteria)和程序,婦女很少有機會像男人一樣,在國際上平等地代表本國政府、參與國際組織工作。(見一般性建議23/38)

全球化使男女平等地參與國際組織的問題變得越來越重要。把性別觀念和婦女人權納入所有國際組織的議程中,是各國政府義不容辭的責任。很多關於全球性的問題,例如建立和平(peacemaking)和解決衝突、軍費支出(military expenditure)與解除核武(nuclear disarmament)、發展與環境、對外援助(foreign aid)和重新調整經濟結構(economic restructuring)等問題的關鍵性決定,都還是在婦女參與有限的情況下作出來的,這與婦女參與這些領域的非政府組織活動之情況形成鮮明的對比(in stark contrast)。(見一般性建議23/39)讓大批婦女參與國際談判、維持和平

活動、預防性外交(preventive diplomacy)、調解(mediation)、人道主義援助 (humanitarian assistance)、社會和解(social reconciliation)、和平談判以及國際刑事司法制度,將非常重要。在解決武裝或其他衝突問題時,性別觀點和分析有助於理解其對男女所帶來的不同影響。(見一般性建議23/40)

### 二、我國相關法規例示

過去許多國家舉行之考試有性別的限制,或是在男女需用名額上男多於女。例如:外交領事人員特考曾分定男女錄取名額,1996年以後,在婦女團體的積極努力下取消了性別的限制。2000年時考試院作成決議,由於某些職務在男女員額需求上不同,因此仍允許監所管理員、法警、執達員類科擬分定男女需用名額。嗣後考試院也於2003年刪除關務人員特考中「分定男女錄取名額或限制報考性別」的規定,法警之性別限制亦在2005年刪除。目前各類國家考試,都沒有性別限制,但司法特考三等考試監獄官類科,因工作性質特殊,有女監與男監之分,而有不同的需用名額,爲應該機關實際任用需要,因此依性別分定男女錄取名額。依照性別有不同之錄取名額。

【與本條相關之一般性建議】一般性建議第23號

【前交引用之一般性建議】

#### 一般性建議 23/35

※聯合國官方中文版(簡轉繁)

第八條規定各國政府有責任確保婦女有機會參與國際事務各個級別以及各個領域的活動,從而促使她們參與經濟和軍事事務、參與多邊和雙邊外交活動以及參加國際和區域會議的官方代表團。

※聯合國官方英文版

Under article 8, Governments are obliged to ensure the presence of women at all levels and in all areas of international affairs. This requires that they be included in economic and military matters, in both multilateral and bilateral diplomacy, and in official delegations to international and regional conferences.

### 一般性建議 23/36

※聯合國官方中文版(簡轉繁)

從對各締約國的報告的審查來看,很明顯,大部分政府的外交和外事機構中婦女任職的人數不足,特別是在最高級別上。婦女常常被派往對本國的對外關係不太

重要的使館。在某些情況下,婦女的任命還會因婚姻狀況方面的限制而受到歧視。在其他情況下,在同等地位上的婦女得不到男外交官所享有的配偶和家庭福利待遇。有關方面往往不給予婦女參與國際事務的機會,因為他們假定婦女要承擔家務負擔,包括假定她們由於必須照顧家庭中受撫養的人而無法接受任命。 ※聯合國官方英文版

From an examination of the reports of States parties, it is evident that women are grossly under-represented in the diplomatic and foreign services of most Governments, and particularly at the highest ranks. Women tend to be assigned to embassies of lesser importance to the country's foreign relations and in some cases women are discriminated against in terms of their appointments by restrictions pertaining to their marital status. In other instances spousal and family benefits accorded to male diplomats are not available to women in parallel positions. Opportunities for women to engage in international work are often denied because of assumptions about their domestic responsibilities, including that the care of family dependants will prevent them accepting appointment.

### 一般性建議 23/37

※聯合國官方中文版(簡轉繁)

很多常駐聯合國和其他國際組織的代表團中都沒有女外交官,在較高級別上的婦女也很少。負責確定設立國際和全球目標、議程和優先次序的專家組會議也有類似情況。聯合國系統的組織以及在區域一級的經濟、政治和軍事機構已成為重要的國際公共雇主,但即使是在這裡,婦女仍然是少數,而且主要集中在較低級別上。 ※聯合國官方英文版

Many Permanent Missions to the United Nations and to other international organizations have no women among their diplomats and very few at senior levels. The situation is similar at expert meetings and conferences that establish international and global goals, agendas and priorities. Organizations of the United Nations system and various economic, political and military structures at the regional level have become important international public employers, but here, too, women have remained a minority concentrated in lower-level positions.

#### 一般性建議 23/38

※聯合國官方中文版(簡轉繁)

往往由於在任命和提升人員提供重要職位和參加官方代表團方面缺少客觀的標準和程式,婦女很少有機會象男子一樣,在國際上平等地代表本國政府、參與國際組織工作。

#### ※聯合國官方英文版

There are few opportunities for women and men, on equal terms, to represent Governments at the international level and to participate in the work of international organizations. This is frequently the result of an absence of objective criteria and processes for appointment and promotion to relevant positions and official delegations.

## 一般性建議 23/39

※聯合國官方中文版(簡轉繁)

現代世界的全球化使得讓婦女與男子一樣平等地參與國際組織的問題變得越來越重要。把性別觀念和婦女的人權納入所有國際組織的議程中是各國政府義不容辭的責任。很多關於全球性問題——例如建立和平和解決衝突、軍費支出與核裁軍、發展與環境、對外援助和重新調整經濟結構等問題——的關鍵決定都是在婦女參與有限的情況下做出的,這與婦女參與這些領域的非政府組織活動的情況形成鮮明對比。

#### ※聯合國官方英文版

The globalization of the contemporary world makes the inclusion of women and their participation in international organizations, on equal terms with men, increasingly important. The integration of a gender perspective and women's human rights into the agenda of all international bodies is a government imperative. Many crucial decisions on global issues, such as peacemaking and conflict resolution, military expenditure and nuclear disarmament, development and the environment, foreign aid and economic restructuring, are taken with limited participation of women. This is in stark contrast to their participation in these areas at the non-governmental level.

#### 一般性建議 23/40

※聯合國官方中文版(簡轉繁)

讓大批婦女參與國際談判、維持和平活動、所有級別上的預防性外交、調解、人 道主義援助、社會和解、和平談判以及國際刑事司法制度將會產生重要作用。在 解決武裝或其他衝突問題時,性別觀點和分析有助於理解對男女分別帶來不同影

### 響。

### ※聯合國官方英文版

The inclusion of a critical mass of women in international negotiations, peacekeeping activities, all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation, peace negotiations and the international criminal justice system will make a difference. In addressing armed or other conflicts, a gender perspective and analysis is necessary to understand their differing effects on women and men.

## 第九條

1.締約各國應給予婦女與男子有取得、改變或保留國籍的同等權利。締約各國應特別保證,與外國人結婚或於婚姻存續期間丈夫改變國籍均不當然改變妻子的國籍,使她成為無國籍人,或把丈夫的國籍強加於她。 2.締約各國在關於子女的國籍方面,應給予婦女與男子平等的權利。

## 一、背景及概說

國籍對於充分參加社會生活至爲重要。婦女沒有國民或公民的地位,就沒有選舉或擔任公職的權利,並且可能無從獲得公共福利和選擇居所(residence)。成年婦女應能改變國籍,不應由於結婚或婚姻關係的解除,或由於丈夫或父親改變國籍,而使其國籍被恣意改變。(見一般性建議21/6) CEDAW委員會甚至希望女性戶籍及住所的問題能像有關國籍的情形一樣處理。委員會發現,各國法律不一定會允許婦女選擇其自己的戶籍。不論其婚姻狀況爲何,成年婦女都應能根據自己的意願改變戶籍,就像有關國籍的情形一樣,讓婦女在與男性相同的基礎上,有選擇戶籍的權利。(見一般性建議21/9)

## 二、女性於國際間遷徙之特殊問題

有女性移工在本國工作的締約國應採取一切適當措施,確保女性移工 (women migrant workers)包括在她們自己的社區內不受歧視和享有平等權利。應 採取的措施包括但不限於以下:

#### (一)取消對移徙的歧視性禁令或限制

締約國應立即廢除對婦女移徙的歧視性禁令(discriminatory bans)和限制。締約國應確保本國簽證制度(visa schemes)不會對婦女造成間接歧視,讓女性移工可不受限制地受雇於某些以男性爲主的工作類別(certain job categories where men predominate),也不排除某些以女性爲主的職業(female-dominated occupations)於簽證制度之外。締約國還應解除有關禁止女性移工與國民或永久居民 (permanent residents)結婚、懷孕或獲得獨立住所(independent housing)的禁令 (CEDAW第2條(f)款)。

#### (二)對女性移工權利的法律保護

締約國應確保憲法、民法及勞工法爲女性移工提供與本國勞工一樣的權利和 保護,包括組織權和自由結社權(the right to organize and freely association)。締約 國應確保女性移工的契約具有法律效力。特別是,它們應確保以女性移工為主的職業,如家務工作(domestic work)和某些形式的娛樂工作,都受到勞工法的保障,包括工資和工時法規(wage and hour regulations)、健康和安全守則(health and safety codes)以及假日和休假法規(holidays and vacation leave regulations)。這些法律應包括監督女性移工工作場所條件(workplace conditions)的機制,尤其是在以她們為主的工作類別中(CEDAW第2(a)、(f)和11條)。

### (三) 救濟管道(access to remedies)

締約國應確保女性移工在其權利受到侵犯時,有能力獲得救濟(have the ability to access remedies)。具體措施包括但不限於以下(CEDAW第2(c)、(f)和3條):

締約國應確保女性移工在她們的權利受到侵犯時,有可能獲得救濟。具體措施包括但不限於以下(CEDAW第2(c)、(f)和3 條):

- 頒佈和執行有關法規,包括適當的法律救濟措施和申訴機制,並建立使用方便的爭端解決機制,保護合法和非法女性移工免遭歧視或基於性別的剝削和虐待;
- 2. 廢除(repeal)或修改(amend)有礙女性移工使用法院和其他救濟制度(system of redress)。其中包含有關因剝削或虐待提出申訴,及在等候調查期間喪失工作許可,導致收入損失並可能遭到移民當局驅逐出境的法律。締約國應在更換雇主或贊助人(supporter)的過程中保留彈性,不在勞工申訴虐待的案件中將其驅逐出境(deportation);
- 3. 確保女性移工有機會獲得法律協助,也有機會訴諸法院並向負責執行勞工法 規主管機關提出申訴,包括獲得免費法律扶助(legal aid);
- 4. 提供那些想要離開虐待她們的雇主、丈夫或其他親屬的女性移工,臨時之底護所(temporary shelter),並在審判期間提供安全的庇護所。

#### (四)對行動自由(freedom of movement)的法律保護

締約國應確保雇主和招聘者(recruiters)不沒收(confiscate)或銷毀屬於移徙婦女的旅行或身份證件(travel or identity documents)。締約國還應採取步驟,制止將女性移工強行隔離(forced seclusion)或鎖在家中,尤其是那些從事家事服務(domestic services)的女工。警官(police officers)應接受培訓,以保護女性移工免於

受虐待的權利(CEDAW第 2(e)條)。

## (五) 非歧視性家庭團聚計畫(family reunification)

締約國應確保移徙工人家庭團聚計畫(family reunification schemes)不構成直接或間接的性別歧視(CEDAW第2(f)條)。

### (六) 非歧視性居留法規

如女性移工獲得居留證(residency permits)的前提是雇主或配偶(spouse)的擔保,締約國應頒佈有關獨立居留身份(independent residency status)的規定。應制定法規,允許從虐待她的雇主或配偶處逃離,或給予因申訴雇主或配偶虐待遭解聘的婦女合法居留(legal stay) (CEDAW第2(f)條)。

### (七) 培訓和意識覺醒(awareness-raising)

締約國應強制(mandatory)爲有關公營和私營職業介紹所(recruitment agency)和雇主以及刑事司法人員(criminal justice officials)、國境警察(border police)、移民當局(immigration authority)、和社會服務及保健人員等相關國家工作人員參加其所舉辦的女性移工權利之意識覺醒課程,並開展具性別敏感度(gender sensitivity)的訓練(CEDAW第3條)。

## (八) 監督系統(monitoring system)

締約國應通過法規並設立監督系統,以確保招聘人員和雇主尊重所有女性移工的權利。締約國應密切監督職業介紹所(recruiting agents),並對它們的暴力、脅迫、欺騙或剝削行為予以起訴(CEDAW第2(e)條):

#### 1. 服務的取得

締約國應確保爲女性移工提供在語言和文化上適當且具有性別敏感度的服務,包括語言和技能培訓方案、緊急收容中心(emergency shelters)、保健服務、員警服務(police services)、文娛節目,以及專爲家事服務工(domestic workers)和被隔絕在家中(secluded in the home)之女工等女性移工以及家庭暴力的受害人設計的方案。無論受虐者的移民身份如何,都必須向她們提供相關的緊急和社會服務(CEDAW第3、5和12條)。

2. 合法或非法(documented or undocumented)女性移工被拘留時(in detention)的權利

締約國應確保女性移工在被拘留時, 免遭歧視或基於性別的暴力, 並確保孕婦和哺乳婦女(breastfeeding mothers)以及健康狀況不佳的婦女獲得適當的服務。締約國應審查、廢除(eliminate)或修改導致過多女性移工因移徙原因而被拘留的法律、法規或政策(CEDAW第2(d)和5條)。

## (九) 幫助女性移工融入社會(social inclusion)

締約國應通過政策和方案,使女性移工能夠融入新的社會。在從事此類工作時應依照CEDAW尊重女性移工的文化認同(cultural identity),保障她們的人權(CEDAW第5條)。

## (十) 保護無證女性移工(undocumented women migrant workers)

儘管無證女性移工沒有移民身份(immigration status),締約國仍有義務保護她們的基本人權。無證女性移工在有生命危險或可能遭受殘酷和有辱人格的待遇時;或在她們被追從事強制性勞動(forced labour),滿足基本需要的權利可能被剝奪的情況下;包括在健康出現緊急問題或懷孕及分娩時;或如果她們遭到雇主或其他人的身體虐待和性虐待,必須有機會尋求法律救濟和司法手段。如果她們被逮捕或拘留,締約國必須確保無證女性移工受到人道待遇(humane treatment)並可訴諸適當法律程序,包括免費法律扶助。在這方面,締約國應廢除或修訂有礙無證女性移工訴諸法院和其他救濟管道的法律及慣例。如果驅逐出境無法避免,締約國需要分別處理每一件個案,適當考慮與性別有關的情況以及原籍國(the country of origin)侵犯人權的危險(CEDAW第2(c)、(e)和(f)條)。(見一般性建議26/26)

### 三、我國相關法規例示

依照國籍法規定,外國人與我國國民結婚者,不當然取得我國國籍,限於中華民國領域內有住所,符合一定要件(如無犯罪紀錄、放棄原始國籍之證明、有相當之財產或專業技能、具備我國基本語言能力及國民權利義務基本常識等),並在我國每年合計有一百八十三日以上合法居留之事實繼續三年以上,始可申請我國籍。我國對於外國人在台工作,依照就業服務法的規定,原則上須經雇主申請許可,並限制行業別。但外國人如與在中華民國境內設有戶籍之國民結婚,且獲准居留者,可不需申請工作許可(就業服務法第48條第1項第2款)。

但大陸地區人民爲我國人民的配偶時,並不適用前述規定。依照臺灣地區與 大陸地區人民關係條例,大陸地區人民與我國國民結婚者,可以申請在臺定居(兩 岸關係條例第 16 條),或是於依法進入臺灣與配偶團聚後,申請在臺灣地區依親 居留。依親居留滿四年後可申請長期居留,最後申請在台定居(同法第 17 條)。 而大陸配偶在臺灣地區依親居留或長期居留者,居留期間得在臺灣地區工作(同 法第 17-1 條)。

【與本條相關之一般性建議】一般性建議第26號

【前文引用之一般性建議】

## 一般性建議21/6

※聯合國官方中文版(簡轉繁)

國籍對於充分參加社會生活至為重要。一般而言,國家對出生於本國的人給予國籍。也可由於定居的理由獲得國籍,或由於人道理由如無國籍身份而獲給予國籍。婦女沒有國民或公民的地位,就沒有選舉或擔任公職的權利,並且可能無從獲得公共福利和選擇居所。成年婦女應能改變國籍,不應由於結婚或婚姻關係的解除或由於丈夫或父親改變國籍而其國籍被專橫地改變。

※聯合國官方英文版

Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

#### 一般性建議21/9

※聯合國官方中文版(簡轉繁)

在普通法國家,戶籍這個概念是指一個人打算居住並受其管轄的國家。子女原先 是通過父母得到戶籍,但在成年時,戶籍是指一個人通常居住並且打算永久居住 的國家。像有關國籍的情形一樣,審查締約國的報告顯示,法律並不總是允許婦 女選擇其自己的戶籍。成年婦女應能根據自己的意願改變戶籍,而不論其婚姻狀 況如何,就象有關國籍的情形一樣。對於婦女在與男子相同的基礎上選擇戶籍的 權利的任何限制,就可能限制她在居住國向法庭申訴或阻礙她自身有權利自由進 入或離開一國國境。

※聯合國官方英文版

Domicile is a concept in common law countries referring to the country in which a person intends to reside and to whose jurisdiction she will submit. Domicile is originally acquired by a child through its parents but, in adulthood, denotes the country in which a person normally resides and in which she intends to reside permanently. As in the case of nationality, the examination of States parties' reports demonstrates that a woman will not always be permitted at law to choose her own domicile. Domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman's right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.

## 一般性建議26/26

※聯合國官方中文版(簡轉繁)

有移徙婦女在本國工作的締約國應採取一切適當措施,確保移徙女工包括在她們 自己的社區內不受歧視和享有平等權利。應採取的措施包括但不限於以下:

- (a) 取消對移徙的歧視性禁令或限制:締約國應立即廢除對婦女移徙的禁令和歧視性限制。締約國應確保本國簽證制度不間接歧視婦女,允許移徙女工不受限制地受雇於某些以男性為主的工作類別,也不把某些以女性為主的職業排除在簽證制度之外。締約國還應解除有關禁止移徙女工與國民或永久居民結婚、懷孕或獲得獨立住所的禁令(第2條(f)款);
- (b) 對移徙女工權利的法律保護:締約國應確保憲法和民法以及勞工法典為移徙 女工提供與給予本國所有工人一樣的權利和保護,包括組織權和自由結社權。締 約國應確保移徙女工的合同具有法律效力。特別是,它們應確保以移徙女工為主 的職業,如家務工作和某些形式的娛樂工作,都受到勞工法的保護,包括 工資和工時法規、健康和安全守則以及假日和休假條例。這些法律應包括監測移 徙女工工作場所條件的機制,尤其是在以她們為主的工作類別中(第2(a)、(f)和11 條);
- (c) 獲得補救:締約國應確保移徙女工在她們的權利受到侵犯時,有能力獲得補 救。具體措施包括但不限於以下(第2(c)、(f)和3條):
  - (i)頒佈和執行有關法律和條例,包括適當的法律補救措施和投訴機制,並建立 使用方便的爭端解決機制,保護持證和無證移徙女工免遭歧視或基於性別的剝 削和虐待;

- (ii) 廢除或修改有礙移徙女工使用法院和其他矯正系統的法律.其中包括有關 因工人就剝削或虐待提出投訴及在等候調查期間喪失工作許可導致收入損失 並可能遭到移民當局遞解出境的法律。締約國應在更換雇主或擔保人的程式中 引入靈活性,不在工人投訴虐待的案件中實施遞解;
- (iii) 確保移徙女工有機會獲得法律援助,也有機會訴諸法院並向負責執行勞工 就業法的監管系統提出申訴,包括獲得免費法律援助;
- (iv) 為那些想要離開虐待她們的雇主、丈夫或其他親屬的移徙女工提供臨時住所,並在審判期間提供安全的住宿設施;
- (d) 對行動自由的法律保護:締約國應確保雇主和招聘者不沒收或銷毀屬於移徙婦女的旅行或身份證件。締約國還應採取步驟,制止將移徙女工強行隔離或鎖在家中,尤其是那些從事家庭服務的女工。警官應接受培訓,以保護移徙女工不受這些虐待的權利(第2(e)條);
- (e) 非歧視性家庭團聚計畫:締約國應確保移徙工人家庭團聚計畫不構成直接或間接的性別歧視(第2(f)條);
- (f) 非歧視性居留條例:如移徙女工獲得居留證的前提是雇主或配偶的擔保,締約國應頒佈有關獨立居留身份的規定。應制定條例,允許從虐待她的雇主或配偶處逃離或因投訴受到虐待而被解雇的婦女合法逗留(第2(f)條);
- (g) 培訓和提高認識:締約國應為有關公營和私營職業介紹所和雇主以及刑事司法官員、邊境員警、移民當局、邊防員警和社會服務及保健人員等相關國家工作人員舉辦強制性提高認識課程,講授移徙女工的權利,並開展敏感認識性別問題的訓練(第3條);
- (h) 監測系統:締約國應通過法規並設立監測系統,以確保招聘人員和雇主尊重 所有移徙女工的權利。締約國應密切監測職業介紹所,並對它們的暴力、脅迫、 欺騙或剝削行為予以起訴(第2(e)條);
- (i) 獲得服務:締約國應確保為移徙女工提供在語言和文化上適當的對性別問題 敏感的服務,包括語言和技能培訓方案、緊急收容中心、保健服務、員警服務、 文娱節目,以及專為家庭傭工和被隔絕在家中的其他女工等孤立移徙女工以及家 庭暴力的受害人設計的方案。無論受虐者的移民身份如何,都必須向她們提供相 關的緊急和社會服務(第3、5 和12 條);
- (j) 持證或無證移徙女工被拘留時的權利:締約國應確保移徙女工在被拘留時免遭歧視或基於性別的暴力,並確保孕婦和哺乳母親以及健康狀況不佳的婦女獲得適當的服務。締約國應審查、取消或修改導致過多移徙女工因移徙原因而被拘留的法律、法規或政策(第2(d)和5條);

- (k) 移徙女工融入社會:締約國應通過政策和方案,使移徙女工能夠融入新的社會。在從事此類工作時應依照《公約》尊重移徙女工的文化特徵,保護她們的人權(第5條);
- (1) 保護無證移徙女工:無證婦女的境況需要特別注意。儘管無證移徙女工沒有移民身份,締約國仍有義務保護她們的基本人權。無證移徙女工在有生命危險或可能遭受殘酷和有辱人格的待遇時,或在她們被迫從事強制性勞動,滿足基本需要的權利可能被剝奪的情況下,包括在健康出現緊急問題或懷孕及分娩時,或如果她們遭到雇主或其他人的身體虐待和性虐待,必須有機會訴諸法律補救方法和司法手段。如果她們被逮捕或拘留,締約國必須確保無證移徙女工受到人道待遇並可訴諸適當法律程式,包括免費法律援助。在這方面,締約國應廢除或修訂有礙無證移徙女工訴諸法院和其他矯正系統的法律及慣例。如果遞解出境無法避免,締約國需要分別處理每一件個案,適當考慮與性別有關的情況以及原籍國侵犯人權的危險(第2(c)、(e)和(f)條)。

#### ※聯合國官方英文版

States parties in countries where migrant women work should take all appropriate measures to ensure non-discrimination and the equal rights of women migrant workers, including in their own communities. Measures that may be required include, but are not limited to, the following:

- a. Lifting of discriminatory bans or restrictions on immigration: States parties should repeal outright bans and discriminatory restrictions on women's immigration. They should ensure that their visa schemes do not indirectly discriminate against women by restricting permission to women migrant workers to be employed in certain job categories where men predominate, or by excluding certain female-dominated occupations from visa schemes. Further, they should lift bans that prohibit women migrant workers from getting married to nationals or permanent residents, becoming pregnant or securing independent housing (article 2 (f));
- b. Legal protection for the rights of women migrant workers: States parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to organize and freely associate. They should ensure that contracts for women migrant workers are legally valid. In particular, they should ensure that occupations dominated by women migrant workers, such

- as domestic work and some forms of entertainment, are protected by labour laws, including wage and hour regulations, health and safety codes and holiday and vacation leave regulations. The laws should include mechanisms for monitoring workplace conditions of migrant women, especially in the kinds of jobs where they dominate (articles 2 (a), (f) and 11);
- c. Access to remedies: States parties should ensure that women migrant workers have the ability to access remedies when their rights are violated. Specific measures include, but are not limited to, the following (articles 2 (c), (f) and 3):
  - i. Promulgate and enforce laws and regulations that include adequate legal remedies and complaints mechanisms, and put in place easily accessible dispute resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse;
  - ii. Repeal or amend laws that prevent women migrant workers from using the courts and other systems of redress. These include laws on loss of work permit, which results in loss of earnings and possible deportation by immigration authorities when a worker files a complaint of exploitation or abuse and while pending investigation. States parties should introduce flexibility into the process of changing employers or sponsors without deportation in cases where workers complain of abuse;
  - iii. Ensure that women migrant workers have access to legal assistance and to the courts and regulatory systems charged with enforcing labour and employment laws, including through free legal aid;
  - iv. Provide temporary shelters for women migrant workers who wish to leave abusive employers, husbands or other relatives and provide facilities for safe accommodation during trial;
- d. Legal protection for the freedom of movement: States parties should ensure that employers and recruiters do not confiscate or destroy travel or identity documents belonging to women migrants. States parties should also take steps to end the forced seclusion or locking in the homes of women migrant workers, especially those working in domestic service. Police officers should be trained to protect the rights of women migrant workers from such abuses (article 2 (e));
- e. Non-discriminatory family reunification schemes: States parties should ensure that

- family reunification schemes for migrant workers are not directly or indirectly discriminatory on the basis of sex (article 2 (f));
- f. Non-discriminatory residency regulations: when residency permits of women migrant workers are premised on the sponsorship of an employer or spouse, States parties should enact provisions relating to independent residency status. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or spouse or is fired for complaining about abuse (article 2 (f));
- g. Training and awareness-raising: States parties should provide mandatory awareness-raising programmes concerning the rights of migrant women workers and gender sensitivity training for relevant public and private recruitment agencies and employers and relevant State employees, such as criminal justice officers, border police, immigration authorities, border police and social service and health-care providers (article 3);
- h. Monitoring systems: States parties should adopt regulations and design monitoring systems to ensure that recruiting agents and employers respect the rights of all women migrant workers. States parties should closely monitor recruiting agencies and prosecute them for acts of violence, coercion, deception or exploitation (article 2 (e));
- i. Access to services: States parties should ensure that linguistically and culturally appropriate gender-sensitive services for women migrant workers are available, including language and skills training programmes, emergency shelters, health-care services, police services, recreational programmes and programmes designed especially for isolated women migrant workers, such as domestic workers and others secluded in the home, in addition to victims of domestic violence. Victims of abuse must be provided with relevant emergency and social services, regardless of their immigration status (articles 3, 5 and 12);
- j. The rights of women migrant workers in detention, whether they are documented or undocumented: States parties should ensure that women migrant workers who are in detention do not suffer discrimination or gender-based violence, and that pregnant and breastfeeding mothers as well as women in ill health have access to appropriate services. They should review, eliminate or reform laws, regulations, or policies that result in a disproportionate number of women migrant workers being detained for migration-related reasons (articles 2 (d) and 5);

- k. Social inclusion of women migrant workers: States parties should adopt policies and programmes with the aim of enabling women migrant workers to integrate into the new society. Such efforts should be respectful of the cultural identity of women migrant workers and protective of their human rights, in compliance with the Convention (article 5);
- 1. Protection of undocumented women migrant workers: the situation of undocumented women needs specific attention. Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights. Undocumented women migrant workers must have access to legal remedies and justice in cases of risk to life and of cruel and degrading treatment, or if they are coerced into forced labour, face deprivation of fulfilment of basic needs, including in times of health emergencies or pregnancy and maternity, or if they are abused physically or sexually by employers or others. If they are arrested or detained, the States parties must ensure that undocumented women migrant workers receive humane treatment and have access to due process of the law, including through free legal aid. In that regard, States parties should repeal or amend laws and practices that prevent undocumented women migrant workers from using the courts and other systems of redress. If deportation cannot be avoided, States parties need to treat each case individually, with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin (articles 2 (c), (e) and (f));